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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 4912 of 2007
Date of decision: 24.9.2007

Rajpal ...Petitioner

Versus

Dharam Singh Dhillon and others ...Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Dr. Sushil Gautam, Advocate for the petitioner.

Mr. G.S.Sandhawalia, Advocate for the respondent.

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RAJESH BINDAL, J.

The challenge in the present petition filed in September, 2006 is to an order dated July 16, 2003 passed by the learned Additional District Judge (Adhoc), Patiala.

2. Learned counsel for the petitioner submitted that in appeal, the respondents could not be permitted to withdraw the suit once the findings have already been recorded in his favour. He has relied upon the judgment in **Gian Chand and another Vs. Pavitar Singh 1993 Punjab Law Reporter 360.**

3. On the other hand, learned counsel for the respondents submitted that in appeal, the suit was sought to be withdrawn for the technical defects therein. He further submitted that the notice of the application filed by the respondents was given to the counsel for the petitioner, who was present in the Court and accepted the same and the impugned order was passed in his presence whereby they were permitted to withdraw the suit and permission was granted to file a fresh suit for declaration on the same cause of action. In any case if the petitioner was aggrieved against the order, the same should have been challenged without any further delay and not after more than three years after passing of the

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order.

4. In reply thereto, learned counsel for the petitioner submitted that he came in knowledge of the order passed by the learned Court below only when he received notice in the subsequent suit filed by the respondents in 2006 and it was thereafter, he could file the present petition and accordingly, the same is not delayed.

5. Having heard learned counsel for the parties, I do not find any substance in the contention raised by learned counsel for the petitioner. In appeal before the Additional District Judge (Adhoc), Patiala, petitioner was duly represented by the counsel and the impugned order was passed in his presence whereby after permitting the respondents to withdraw the suit, liberty was granted to file a fresh suit for declaration on the same cause of action. Once the order was passed in the presence of learned counsel for the petitioner in the Court below nothing lies in the mouth of the petitioner to state that he had no knowledge of the order passed by the Court below and delay in filing the present petition is justified on that ground.

6. Accordingly, I do not find any merit in the present petition and the same is dismissed on account of delay and laches only.

September 24, 2007 **(Rajesh Bindal)**
Pka **Judge**